

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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JUL 18 1975

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MATTER OF: DOD Military Pay and Allowance Committee Action
No. 509 - Members Ordered to Active Duty for
Physical Examinations

- DIGEST:**
1. A Reserve or retired member ordered to active duty to take a physical examination incident to being ordered to active duty for more than 30 days is entitled to pay and allowances for the period of the examination and travel time to and from the examination, provided orders place member in an active duty status.
 2. A Reserve or retired member who passes a physical examination incident to being ordered to active duty for more than 30 days is entitled to pay and allowances for travel time to his first duty station when later ordered to active duty for more than 30 days.
 3. A Reserve or retired member who does not pass the physical examination given incident to being ordered to active duty for more than 30 days is entitled to pay and allowances for the period required for the examination and travel time to and from the examination, provided orders place member in an active duty status.
 4. A Reserve or retired member ordered to active duty solely to take a physical examination, not incident to being ordered to active duty, is not entitled to active duty pay and allowances.

This action is in response to a letter from the Assistant Secretary of Defense (Comptroller) requesting an advance decision on four questions presented in Department of Defense Military Pay and Allowance Committee Action No. 509, enclosed with the letter. The questions concern the entitlement to active duty pay and allowances of Reserve or retired members ordered to active duty for the purpose of taking physical examinations.

The questions presented in the Committee Action are as follows:

097364 - 097364

"1. Is a reserve or retired member who is ordered to active duty for the purpose of taking a physical examination incident to his being ordered to active duty for more than 30 days, entitled to active duty pay and allowances for the period required to take the physical examination and for the allowable travel time to and from the place of the physical examination?

"2. If question 1 is answered in the affirmative, is the reserve or retired member who passes the physical examination also entitled to pay and allowances for allowable travel time to his first duty station when later ordered to active duty for a period of more than 30 days?

"3. If question 1 is answered in the affirmative, is the reserve or retired member, who does not pass the physical examination, also entitled to active duty pay and allowances for the period required to take the physical examination and for the allowable travel time to and from the place of the physical examination?

"4. If question 1 is answered in the affirmative, is a reserve or retired member ordered to active duty solely for a physical examination without further active duty being contemplated entitled to active duty pay and allowances for the period required to take the physical examination and for allowable travel time to and from the place of the physical examination?"

Under the provisions of 37 U.S.C. 204(a)(1970), the following persons are entitled to basic pay:

"(1) a member of a uniformed service who is on active duty; and

"(2) a member of a uniformed service, or a member of the National Guard who is not a Reserve of the Army or the Air Force, who is participating in full-time training, training

duty with pay, or other full-time duty, provided by law, including participation in exercises or the performance of duty under section 3033, 3496, 3541, 8033, 8496, or 8541 of title 10, or section 503, 504, 505, or 506 of title 32."

The Committee Action refers to 37 U.S.C. 204(b)(1970) which provides as follows:

"(b) For the purposes of subsection (a) of this section, under regulations prescribed by the President, the time necessary for a member of a uniformed service who is called or ordered to active duty for a period of more than 30 days to travel from his home to his first duty station and from his last duty station to his home, by the mode of transportation authorized in his call or orders, is considered active duty."

The Committee Action states that a literal interpretation of subsection 204(b) suggests that a member in the situation described in question 1 would not be entitled to active duty pay and allowances for the allowable travel time to and from the place of the physical examination because such a member was not actually "called or ordered to active duty for a period of more than 30 days." The Committee Action states that such an interpretation of subsection 204(b) is supported by 48 Comp. Gen. 78, 80 (1968) and 44 Comp. Gen. 43, 49 (1964), which, while not directly on point, state that under subsection 204(b) reservists ordered to active duty for more than 30 days are in an active duty status expanded to include the allowable travel time from their homes to their first duty station and from their last duty station to their homes.

The Committee Action also indicates, however, that 44 Comp. Gen. 701 (1965), when interpreted in conjunction with Adams v. United States, 127 Ct. Cl. 470 (1954), suggests that active duty pay and allowances may be authorized in the situation described in question 1, provided the orders issued to the Reserve or retired member place him in an active duty status while performing the necessary travel. The Committee Action notes, as additional support for this view, that existing provisions of the Department

B-181762

of Defense Military Pay and Allowances Entitlement Manual, Table 1-2-4, Rules 11 and 12, authorize active duty pay and allowances for allowable travel time to and from the duty station for Reserve members ordered to active duty for the purpose of performing two weeks active duty each year.

The Adams case, supra, involved a Naval Reserve Officer ordered to temporary active duty for the purpose of taking a physical examination to determine his fitness to perform extended active duty but who was injured while traveling from his home to the temporary active duty station where he was to undergo the examination. The officer's orders stated that he would be considered in a temporary active duty status during the time required for the examination and for necessary travel. The court held that the officer "was on active duty from the time the journey began." In 33 Comp. Gen. 551 (1954) it was indicated that this Office would follow the Adams decision in similar cases.

It has also been held that orders placing a member on active duty are controlling and that it is within the discretion of the head of the department concerned to adopt the form of order which, if he so desires, will place a member in an active duty status for purposes of undergoing a physical examination to determine his fitness to perform active duty and during the travel time to and from the place of the examination. If the orders place the member in an active duty status, it was held that he would be entitled to travel allowance and pay while traveling. See 28 Comp. Gen. 370 (1948). The fact that upon taking the physical examination, the member is found physically unfit for continued active duty and is returned home, would not affect his entitlement to pay and allowances for the period served. See 19 Comp. Gen. 282 (1939) and 34 Comp. Gen. 369 (1955). However, when the member's orders do not place him in an active duty status during such periods, he is not entitled to pay and allowances. See 44 Comp. Gen. 701, supra, cited in the Committee Action.

While, as the Committee Action indicates, the legislative history of 37 U.S.C. 204(b) does not clarify the matter, it seems reasonably clear that by statutorily expanding the concept of active duty periods to include the time necessary for such members to travel from home to their first duty station and from their last duty station to home (see 48 Comp. Gen. 78, supra, and 44 Comp. Gen. 43, supra), such provision has in effect limited

B-181762

the Secretary's discretion in such matters. That provision, however, would not appear to affect the Secretary's discretion to authorize, incident to a member being ordered to active duty for a period in excess of 30 days, the issuance of appropriate orders placing him in an active duty status for the period of a physical examination and travel incident thereto, thereby permitting payment of active duty pay and allowances for the time necessary to take such examination and for allowable travel time to and from the place of such examination.

Accordingly, provided appropriate active duty orders are issued, questions 1, 2, and 3 are answered in the affirmative.

Concerning question 4, it has been held that the calling up of a member for the sole purpose of physical examination to determine his fitness for retention in the Reserve or for medical treatment when such examination or treatment is not incident to the performance of active duty, does not constitute "active duty" for the purpose of entitlement to pay and allowances. See 44 Comp. Gen. 521 (1965), 27 Comp. Gen. 490 (1948), 26 Comp. Gen. 107 (1946), and 21 Comp. Gen. 781 (1942). Accordingly, question 4 is answered in the negative.

Paul G. Dembling

For ~~The~~ Comptroller General
of the United States